

WILLIAM TETLEY

MARINE CARGO CLAIMS

Fourth Edition

Volume 2
Chapters 32 to 46
National Summaries and Index

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EXHIBIT C

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ility to timely file a lawsuit. In other
y terms creates no greater risk that
t within the statutory period. Accord-
rcuit in concluding that an unreason-
nullify COGSA's one year statute of

ready taken a similar position,¹⁰⁵
redominant,¹⁰⁶ even in the South-

held that an unreasonable geo-
he one-year time bar of the Hague

ographic deviation may not ordi-
r, however, it *should* do so in cer-
the plaintiff is unaware of the
after the goods have been deliv-

Fl Lines 439 So.2d 1035 at p. 1036 (Fla. 3d
ziona v. M/V Hermes I 724 F.2d 21 at
2 Cir. 1983) (even if allegations of system-
ed additional risks, there was no relation-
is and those risks); *Styling Plastics Co. v.*
6 at p. 1413, 1988 AMC 351 at p. 361 (N.D.
a deviation, a reasonable time limitation
i Parolamas v. M/V Robert E. Lee 1989
. 1989) (the geographic deviation, if one
aintiffs ability to commence action within
is awareness of its rights under COGSA.
statute of limitations be avoided on that
ling Co., Inc. 771 F.Supp. 1193 at p. 1199

v of the Considerations Involved in Han-
Mar. L.J. 263 at p. 316.

S/S Oceanis 690 F. Supp. 1365 at p. 1368

ay (1963) 43 W.W.R. 442 at p. 443 (Alta.

merican President Lines, Ltd. 1989 AMC
the Court stressed that the one-year stat-
ritably tolled if the plaintiffs had failed to
re than one year after the delivery date.

4) "In any event"

Some courts in the United States have had difficulty in reconcil-
ing the sanction of the traditional doctrine of deviation with the
words "in any event" in art. 4(5), first para., which reads:

Neither the carrier nor the ship shall *in any event* be or become liable
for any loss or damage to or in connection with goods in an amount
exceeding 100 pounds sterling per package ... unless the nature and
value of such goods have been declared by the shipper before shipment
and inserted in the bill of lading [Emphasis added].

In the United States, the Seventh Circuit interpreted the words
"in any event" literally and held that the liability of a carrier for dam-
age is always limited to \$500 per package, even in cases of geographic
deviation or other fundamental breach.¹¹⁰ The Second Circuit, on the
other hand, held that when a contract is fundamentally breached by
the carrier, the contract no longer exists and the carrier may not
claim exemptions because the Hague Rules, including the package
limitation of art. 4(5) first para., no longer apply. The approach of the
Second Circuit later became the prevailing rule in virtually all U.S.
federal circuits.¹¹¹ Tenney D.J. of the Southern District of New York,
in *Tuxpan Lim. Procs.*,¹¹² gave an historical overview of the Sev-
enth/Second Circuit dichotomy on this point.

It is noteworthy that the argument adopted above by the Second
Circuit in cases of fundamental breach was also adopted by the Sec-

110. See *Atlantic Mutual Ins. Co. v. Poseidon Schiffahrt*. 313 F. 2d 872 (7 Cir. 1963),
cert. denied, 375 U.S. 819, 1963 AMC 2697 (1963). See also S. L. Gibson, *The*
Evolution of Unreasonable Deviation Under U.S. COGSA (1991) 3 U.S.F. Mar.
L.J. 197 at p. 210; C. Hooper, *Admiralty Law Symposium: Admiralty Law at the*
Millennium: Carriage of Goods and Charter Parties (1999) 73 Tul L. Rev. 1697
at pp. 1715-1716. For a review of the Seventh Circuit's position on this point, see
J. Hoke Peacock, *Deviation and Package Limitation in the Hague Rules and the*
Carriage of Goods by Sea Act: An Alternative Approach to the Interpretation of
International Uniform Acts (1990) 68 Tex. L. Rev. 977.

111. See *Jones v. The Flying Clipper* 116 F. Supp. 386 (S.D. N.Y. 1953);
Encyclopaedia Britannica, Inc. v. S.S. Hong Kong Producer 422 F. 2d 7 (2 Cir.
1969), cert. denied, 397 U.S. 964, 1971 AMC 813 (1970). See also *Spartus Corp.*
v. S.S. Yafu 590 F. 2d 1310, 1979 AMC 2294 (5 Cir. 1979); *General Electric Co. v.*
S.S. Nancy Lykes 706 F.2d 80 at pp. 86-88, 1983 AMC 1947 at pp. 1957-1959
(2 Cir. 1983), cert. denied 464 U.S. 849, 1984 AMC 2403 (1983); *Caterpillar*
Overseas, S.A. v. Marine Transport Inc. 900 F.2d 714 at pp 720-721, 1991 AMC
75 at pp. 83-85 (4 Cir. 1991). See also M. Sturley, *An Overview of the Consider-*
ations Involved in Handling the Cargo Case (1997) 21 Tul. Mar. L.J. 263 at
pp. 339-340 and other decisions cited there.

112. *In Re Tecomar S.A. (Tuxpan Lim. Procs.)* 765 F. Supp. 1150 at p. 1184, 1991
AMC 2432 at p. 2451 and note 92 (S.D. N.Y. 1991).